HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 23165 OF 2005

Between

G.M. Amaresh and others …Petitioners

And

The Inspector of Factories, Kurnool-II,

Kunrool and others …Respondents

Counsel for the petitioners : Mr.K.Rajanna

Counsel for Respondent No.1: GP. for Industries and

Commerce

Counsel for Respondent No.2: GP for Commercial Taxes

Counsel for Respondent No.3: S.I.Newton, SC for

Municipalities

Counsel for Respondent No.4: Mr.S.V.Bhatt

Counsel for Respondent No.5&6: Mr.O.Manohar Reddy

DATED 27TH DECEMBER, 2005.

Per R.Subhash Reddy,J.

This is a petition for issuance of a direction to respondents No.1 to 4 to take action against respondents No.5 and 6 for having acted against the interest of the government. The other prayer made in the writ petition is to declare that the petitioners should not be made liable in respect of the leased premises bearing D.No. 55/V, situated on Venkatapuram Road of Yemmiganur, Kunrool District.

As averred in the affidavit filed in support of the writ petition, it is the case of the petitioners, that they are the owners of premises bearing D.No.55/V, situated on Venktapuram Road of Yemmiganur, Kurnool District, in which, an oil mill was being run, in the name and style of 'Sri Mahalaxmi Oil Mills'. It is stated, that late father of the first petitioner was, owner of the mill, and on his demise, all the petitioners have succeeded to the property. It is further stated, that the said premises was leased out to the fifth respondent for a period of five years by executing registered lease deed on 04-11-1999. It is the case of the petitioners, that in spite of expiry of lease period, fifth respondent is continuing in possession illegally, and, running the oil mill in violation of the provisions of the Factories Act, 1948, and, is not paying property taxes to the municipality, and, creating pollution in the area. It is also stated, that for the violation of provisions of the Factories Act, 1948, a case was registered against fifth respondent i.e., STC No. 3 of 2004 on the file of Judicial Magistrate of First Class, Yemmiganur, and, in that connection, petitioners were forced to pay penalty of Rs.5,000/-. The petitioner has claimed that the possession of the fifth respondent is unauthorized and despite complaints made to them, respondents No.1 to 4 have not taken action against the said respondent.

At the stage of admission, respondents have filed counter affidavits. Second

respondent, in his counter affidavit, while denying the adverse allegations made against him, has stated, that for violating the provisions of the Factories Act, 1948, he has already initiated action. Fourth respondent has filed separate counter affidavit, explaining the various measures he has taken to prevent pollution caused by the fifth respondent. Fifth and sixth respondents also filed separate counter affidavit, stating that they are continuing in the premises in question by virtue of lease granted to them. They have denied various allegations made against them by the petitioners, with regard to alleged violation of the provisions of the Factories Act, 1948, pollution etc. It is further stated, that against the orders passed by the Pollution Control Board, they have already preferred appeal and the same was allowed on 11-3-2005.

We have heard learned counsel for the parties and perused the record.

Sri K. Rajanna, learned counsel for the petitioners submitted that the respondents are duty bound to take action against the fifth respondent for violating the provisions of the Factories Act and various anti-pollution legislations and as they have failed to take action, a mandamus be issued for initiation of proceedings against the fifth respondent.

Learned counsel for the respondents submitted that the allegations made in the petition regarding violation of the provisions of the Factories Act and other enactments are absolutely incorrect apart from being vague and, therefore, the writ petition is liable to be dismissed.

In our opinion, the petitioners have failed to make out a case for entertaining their prayer. It is not in dispute that the petitioners have leased out the premises to the fifth respondent vide registered lease-deed dated
4-11-1999 and for his eviction Original Suit No.7 of 2005 has been filed in the Court of Junior Civil Judge, Yemmiganur. The fifth respondent has also filed Original Suit No.214 of 2004 with the prayer that the petitioners be restrained from interfering with his possession. Both the suits are pending before the competent court. In that view of the matter, we do not find any justification for this Court's interdiction in the matter.

As regards the pollution caused by the industry of the fifth respondent, it is appropriate to mention that the competent authority has already initiated action

against the fifth respondent. Therefore, no relief can be granted by this Court under Article 226 of the Constitution of India.

For the reasons mentioned above, the writ petition is dismissed.

R. SUBHASH REDDY,J.

G.S. SINGHVI, CJ.

27th December, 2005.

Msnr / svs